



CITY OF BILLINGS

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EXHIBIT 2
DATE 1/29/2013
SB 53

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January 28, 2013

Representative Krayton Kerns, Chair
Honorable Members of Montana House Judiciary Committee

Re: SB 53 Elimination of Incarceration Penalties for Certain Misdemeanor Criminal Offenses

Dear Chairman Kerns and House Judiciary Committee Members:

Our office has reviewed SB 53 which concerns elimination of incarceration for specified misdemeanor criminal offenses. After reviewing the audio recording of the previous hearing on this bill before the Senate Judiciary Committee it is our understanding that the intended purpose of the Bill is to reduce the case load for Public Defender Office attorneys handling the defense of misdemeanor defendants that have potential incarceration as a potential penalty. We submit this correspondence in partial support of and in partial opposition to this Bill:

We **support** the following portions of the Bill:

Section 4 Bad Checks
Section 6 Public Nuisance
Section 7 Driving without valid driver's license
Section 8 Driving While Suspended/revoked

We **Oppose** the following portions of the Bill:

Sections 1 Through 3 Misdemeanor theft/Related theft Offenses
Section 5 Disorderly Conduct
Section 9 No Liability Insurance

We oppose the sections immediately referenced above because:

1. These crimes should retain decades-long potential for incarceration as one of several important statutory tools for holding these defendants accountable. Retaining these potential first offense incarceration penalties also provides the maximum ability for Municipal, City and Justice Court Judges and Probation Officers to implement early intervention and preventive behavior modification through supervision of these

defendants who have committed these crimes before their conduct escalates into repeat misdemeanors or worse, felonies. As our Municipal Court Judge indicated to me, leaving only a Contempt of Court proceeding for the Judges to utilize is a reduction of judicial discretion, unwieldy and injects more work for those Judges by adding more tracking requirements for such defendants. It is highly unlikely our Judge will hold a defendant in contempt and incarcerate them for failure to pay a fine.

2. Retaining the potential jail time will eliminate the needless and complicated contempt of court process. Further, there are differing opinions as to whether or not the Courts are allowed to incarcerate a person under the contempt of court process for failure to pay a fine.
3. Reducing the Disorderly Conduct incarceration time from Ten (10) days down to three (3) days jail contradicts the stated goal of this bill. There will remain the obligation to provide a Public Defender for such offenses. Reducing the jail period for this specific offense has significant impact for larger Montana cities such as Billings because these types of offenses are often committed by repeat offenders and reducing the jail time negatively impacts the ability to manage these offenders as their punishment becomes the typical revolving door situation.
4. As to elimination of potential incarceration for misdemeanor property crimes, the threat of incarceration also assists the Courts, Probation officers and our office in achieving restitution and accountability of the defendant. In fact, that concept is articulated in MCA 45-1-101 (1)(a) which states one of several criminal code purposes: "to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individuals or public interests."

While we are sympathetic to Public Defender caseloads, we do not believe the reduction of those caseloads should be a higher priority and concern over that of making crimes victims' as whole as possible through the efforts of the Courts. Retaining all of the tools for that task is essential in maintaining an ordered society that the citizens of Montana expect and deserve.

Thank you for considering our input as you deliberate upon the merits of this Bill.

Very truly yours,



Brent Brooks
Billings City Attorney